

positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of a non-cleared swap or non-cleared security-based swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such non-cleared swap or non-cleared security-based swap.

EFFECTIVE DATE NOTE: At 80 FR 74913, Nov. 30, 2015, § 349.2 was amended by adding a definition of “Covered swap entity” in alphabetical order, effective Apr. 1, 2016. For the convenience of the user, the added text is set forth as follows:

**§ 349.2 Definitions.**

\* \* \* \* \*

*Covered swap entity* means any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is a swap entity, or any other entity that the FDIC determines.

\* \* \* \* \*

**§ 349.3 Initial margin.**

(a) *Collection of margin.* A covered swap entity shall collect initial margin with respect to any non-cleared swap or non-cleared security-based swap from a counterparty that is a financial end user with material swaps exposure or that is a swap entity in an amount that is no less than the greater of:

(1) Zero; or

(2) The initial margin collection amount for such non-cleared swap or non-cleared security-based swap less the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), as applicable.

(b) *Posting of margin.* A covered swap entity shall post initial margin with respect to any non-cleared swap or non-cleared security-based swap to a counterparty that is a financial end user with material swaps exposure. Such initial margin shall be in an amount at least as large as the covered swap entity would be required to col-

lect under paragraph (a) of this section if it were in the place of the counterparty.

(c) *Timing.* A covered swap entity shall comply with the initial margin requirements described in paragraphs (a) and (b) of this section on each business day, for a period beginning on or before the business day following the day of execution and ending on the date the non-cleared swap or non-cleared security-based swap terminates or expires.

(d) *Other counterparties.* A covered swap entity is not required to collect or post initial margin with respect to any non-cleared swap or non-cleared security-based swap described in § 349.1(d). For any other non-cleared swap or non-cleared security-based swap between a covered swap entity and a counterparty that is neither a financial end user with a material swaps exposure nor a swap entity, the covered swap entity shall collect initial margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap or non-cleared security-based swap.

**§ 349.4 Variation margin.**

(a) *General.* After the date on which a covered swap entity enters into a non-cleared swap or non-cleared security-based swap with a swap entity or financial end user, the covered swap entity shall collect variation margin equal to the variation margin amount from the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is positive and post variation margin equal to the variation margin amount to the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is negative.

(b) *Timing.* A covered swap entity shall comply with the variation margin requirements described in paragraph (a) of this section on each business day, for a period beginning on or before the business day following the day of execution and ending on the date the non-cleared swap or non-cleared security-based swap terminates or expires.

(c) *Other counterparties.* A covered swap entity is not required to collect or post variation margin with respect to any non-cleared swap or non-cleared security-based swap described in §349.1(d). For any other non-cleared swap or non-cleared security-based swap between a covered swap entity and a counterparty that is neither a financial end user nor a swap entity, the covered swap entity shall collect variation margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap or non-cleared security-based swap.

**§ 349.5 Netting arrangements, minimum transfer amount, and satisfaction of collecting and posting requirements.**

(a) *Netting arrangements.* (1) For purposes of calculating and complying with the initial margin requirements of §349.3 using an initial margin model as described in §349.8, or with the variation margin requirements of §349.4, a covered swap entity may net non-cleared swaps or non-cleared security-based swaps in accordance with this subsection.

(2) To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and its counterparty that is a swap entity or financial end user, a covered swap entity may calculate and comply with the applicable requirements of this [part] on an aggregate net basis with respect to all non-cleared swaps and non-cleared security-based swaps governed by such agreement, subject to paragraph (a)(3) of this section.

(3)(i) Except as permitted in paragraph (a)(3)(ii) of this section, if an eligible master netting agreement covers non-cleared swaps and non-cleared security-based swaps entered into on or after the applicable compliance date set forth in §349.1(e) or (g), all the non-cleared swaps and non-cleared security-based swaps covered by that agreement are subject to the requirements of this [part] and included in the aggregate netting portfolio for the purposes

of calculating and complying with the margin requirements of this [part].

(ii) An eligible master netting agreement may identify one or more separate netting portfolios that independently meet the requirements in paragraph (1) of the definition of “Eligible master netting agreement” in §349.2 and to which collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other non-cleared swaps or non-cleared security-based swaps covered by the eligible master netting agreement. Any such netting portfolio that contains any non-cleared swap or non-cleared security-based swap entered into on or after the applicable compliance date set forth in §349.1(e) or (g) is subject to the requirements of this [part]. Any such netting portfolio that contains only non-cleared swaps or non-cleared security-based swaps entered into before the applicable compliance date is not subject to the requirements of this [part].

(4) If a covered swap entity cannot conclude after sufficient legal review with a well-founded basis that the netting agreement described in this section meets the definition of eligible master netting agreement set forth in §349.2, the covered swap entity must treat the non-cleared swaps and non-cleared security based swaps covered by the agreement on a gross basis for the purposes of calculating and complying with the requirements of this [part] to collect margin, but the covered swap entity may net those non-cleared swaps and non-cleared security-based swaps in accordance with paragraphs (a)(1) through (3) of this section for the purposes of calculating and complying with the requirements of this [part] to post margin.

(b) *Minimum transfer amount.* Notwithstanding §349.3 or §349.4, a covered swap entity is not required to collect or post margin pursuant to this [part] with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to this [part] to be collected or posted and that has not yet been collected or posted with respect to the counterparty is greater than \$500,000.